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* Pro Hac Vice Application to be filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

KELVIN D. DANIEL, on Behalf
of Himself and All Others
Similarly Situated

and

TANNA HODGES, on Behalf of
Herself and All Others
Similarly Situated

and

CASE NO:

CLASS ACTION COMPLAINT AND
DEMAND FOR JURY

EXHIBIT

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B

1 ROBERT R. BELL, JR., on
2 Behalf of Himself and All
Others Similarly Situated

3 Plaintiffs,

4 v.

5 SWIFT TRANSPORTATION
6 CORPORATION

7 Defendant.
8

9 **NOW COME** the Plaintiffs, Kelvin D. Daniel, Tanna
10 Hodges and Robert R. Bell, Jr. on behalf of themselves and
11 all other similarly situated individuals and allege the
12 following claims:

13 **PRELIMINARY STATEMENT**

14 1. This is a class action on behalf of consumers who
15 were the subject of criminal background reports obtained by
16 Swift Transportation Corporation ("Swift") as a precondition
17 of employment with Swift during the five-year period
18 preceding the filing of this action (the "Class Period")
19 seeking remedies under the Fair Credit Reporting Act
20 (hereinafter "FCRA"), 15 U.S.C. §1681, et seq.

21 **JURISDICTION AND VENUE**

22 2. The Court has subject matter jurisdiction pursuant
23 to 28 U.S.C. §1331 and 15 U.S.C. §1681p.

24 3. Venue is proper in the District of Arizona because
25 a substantial part of the events or omissions giving rise to
26 the allegations contained herein occurred in the District of
27

1 Arizona. 28 U.S.C. § 1391(b). Further, Swift maintains a
2 principal place of business in this judicial district.

3 **PARTIES**

4 4. Kelvin Daniel ("Daniel") is a citizen of the State
5 of Georgia, a Gulf War veteran, and a "consumer" within the
6 meaning of 15 U.S.C. § 1681a.

7 5. Tanna Hodges ("Hodges") is a citizen of the State of
8 Texas and a "consumer" within the meaning of 15 U.S.C. §
9 1681a.

10 6. Robert R. Bell ("Bell") is a citizen of the State of
11 Pennsylvania and a "consumer" within the meaning of 15 U.S.C.
12 § 1681a.

13 7. Swift is a for-profit corporation with a principal
14 place of business in Maricopa County, State of Arizona.

15 8. Further, Swift is a "person" using "consumer reports"
16 to make "employment decisions" and take "adverse action"
17 against "consumers", as those terms are defined by 15 U.S.C.
18 § 1681a.

19 **ASSERTIONS AS TO DANIEL**

20 9. On or about December 27, 2010, Daniel applied
21 electronically for a commercial truck driver position with
22 Swift.

23 10. To apply for a position with Swift, Daniel accessed
24 Swift's website at www.swifttruckingjobs.com. The only
25 disclosures made to consumers such as Daniel prior to Swift's
26 actions to obtain and use an applicant's consumer reports are
27 as contained in the form and website application attached

1 hereto as Exhibit "A" and Exhibit "B", respectively.

2 11. None of the documents provided by Swift to Daniel
3 contained a clear, conspicuous, and stand alone disclosure
4 that a criminal background report would be obtained for
5 employment purposes.

6 12. Following a successful application process, Daniel
7 was hired and scheduled to attend Swift's orientation program.

8 13. On or about January 24, 2011, during the first
9 day of orientation, and without proper authorization from
10 Daniel, Swift ordered a criminal background report regarding
11 Daniel from HireRight Solutions, Inc. ("HireRight") a consumer
12 reporting agency as defined by 15 U.S.C. § 1681a.

13 14. Immediately upon its receipt of the subject criminal
14 background report, Swift took adverse action against Daniel,
15 dismissing him from orientation based upon the results of the
16 criminal background report.

17 15. At no time did Swift provide Daniel with any verbal
18 or written notice that it intended to take adverse action by
19 declining employment based upon the results of the report.

20 16. Daniel was not provided a copy of the report or a
21 summary of his rights as required by 15 U.S.C. § 1681b(b)(3).

22 **ASSERTIONS AS TO HODGES**

23 17. On or about September 29, 2009, Hodges applied in
24 person for a commercial truck driver position with Swift. At
25 no time did Hodges receive a clear, conspicuous, and stand
26 alone disclosure that a criminal background report would be
27 obtained for employment purposes.

1 18. As with Daniel, the only disclosures made to
2 consumers such as Hodges, prior to Swift's procurement of
3 consumer reports, are contained in small print as part of a
4 longer employment application. The in person application is
5 attached hereto as Exhibit "C." None of the documents
6 provided by Swift to Hodges contained a clear, conspicuous,
7 and stand alone disclosure that a criminal background report
8 would be obtained for employment purposes.

9 19. Without proper authorization from Hodges, Swift
10 ordered a criminal background report regarding Hodges from
11 HireRight.

12 20. Immediately after receiving the subject criminal
13 background report, Swift took adverse action against Hodges by
14 determining to disqualify her from further consideration for
15 employment based upon the results of the criminal background
16 report.

17 21. At no time did Swift provide Hodges with any verbal
18 or written notice that it intended to take adverse action by
19 declining employment based upon the results of the report.

20 22. Hodges was not provided a copy of the report or a
21 summary of her rights as required by 15 U.S.C. § 1681b(b)(3).

22 **ASSERTIONS AS TO BELL**

23 23. On or about October 2, 2009, Bell applied via
24 facsimile for a commercial truck driver position with Swift.

25 24. To apply for a position with Swift, Bell accessed
26 Swift's website at www.swifttruckingjobs.com. The only
27 disclosures made to consumers such as Mr. Bell prior to
28

1 Swift's actions to obtain and use an applicant's consumer
2 reports are as contained in the form and website application
3 attached hereto as Exhibit "A" and Exhibit "B", respectively.

4 25. None of the documents provided by Swift to Bell
5 contained a clear, conspicuous, and stand alone disclosure
6 that a criminal background report would be obtained for
7 employment purposes.

8 26. Further, prior to obtaining Bell's criminal
9 background report, Swift did not provide Bell with verbal,
10 electronic, or written notice of his right to obtain a free
11 copy of a criminal background report from the consumer
12 reporting agency within 60 days, and the right to dispute the
13 accuracy or completeness of any information in the consumer
14 report directly with the consumer reporting agency.

15 27. After receiving Bell's application, Swift, without
16 any authorization from Bell, ordered a criminal background
17 report regarding Bell from HireRight that grossly
18 misidentified Bell as having been convicted of felony
19 burglary, felony robbery, grand larceny, and several parole
20 violations, all leading to a ten-year prison sentence. None of
21 these crimes were committed by Bell.

22 28. On October 2, 2009, immediately after receiving the
23 subject criminal background report, Swift took adverse action
24 against Bell by determining not to hire him based upon the
25 results of the report.

26 29. At no time did Swift provide Bell with any verbal,
27 written, or electronic notice that it intended to take adverse
28

1 action by declining employment based upon the results of the
2 report.

3 30. Bell was never advised by Swift of the reason for the
4 adverse action, nor did he learn of the inaccurate report
5 until on or about October 7, 2009, when he received from
6 HireRight a derogatory letter and a copy of the report.

7 **ASSERTIONS AS TO THE COMMON QUESTIONS**

8 31. For a period exceeding the last five years, Swift has
9 purchased criminal background reports from consumer reporting
10 agencies trafficking in the reputations of America's
11 workforce, which are then used as a basis for taking adverse
12 action against job applicants.

13 32. Swift does not seek or receive an appropriate
14 disclosure and authorization from job applicants as required
15 by 15 U.S.C. § 1681b(b)(2) prior to obtaining these criminal
16 background reports.

17 33. Swift regularly and consistently uses
18 www.swifttruckingjobs.com to solicit and receive employment
19 applications.

20 34. During the class period alleged, Swift regularly and
21 consistently used the forms and website application attached
22 hereto as Exhibit "A", Exhibit "B" and Exhibit "C",
23 respectively as its only consumer disclosures regarding an
24 applicant's criminal background check made prior to Swift's
25 request for and receipt and use of an applicant's consumer
26 report.

1 35. Further, Swift does not provide pre-adverse action
2 notice to job applicants, including a copy of the applicants'
3 criminal background report and a statement of the applicants'
4 rights as required by 15 U.S.C. §§ 1681b(b)(3) and 1681m(a).

5 36. Swift's violations of the FCRA have been willful,
6 wanton and reckless in that Swift knew, or reasonably should
7 have known, that it was failing to comply with the
8 requirements of the FCRA.

9 37. 15 U.S.C. §1681n(a) permits a consumer to recover
10 statutory and punitive damages, along with attorneys' fees and
11 costs for willful violations of the FCRA.

12 **Class Action ASSERTIONS**

13 38. Pursuant to F. R. Civ. P. 23, Daniel, Hodges and Bell
14 bring this action on behalf of the following Classes initially
15 defined below, of which they each a member:

16 **Inadequate Disclosure and Authorization**

17 All natural persons residing in the
18 United States about whom, during the
19 period provided at 15 U.S.C. § 1681p,
20 Swift obtained and/or used a criminal
21 background report or other consumer
22 report for an employment purpose, and
23 for whom Swift used the forms and
24 website application attached hereto as
25 Exhibit "A", Exhibit "B" and/or
26 Exhibit "C", respectively, or content
27 substantially similar, as its only
28 consumer disclosures regarding an
applicant's criminal background check,
made prior to Swift's request for and
receipt and use of the applicant's
consumer report.

39. Daniel and Hodges allege the following class, of
which they each a member:

**Pre-Adverse Action Notice
In-Person Applicants**

All natural persons residing in the United States about whom, during the period provided at 15 U.S.C. § 1681p about whom Swift obtained and/or used a criminal background report or other consumer report for an employment purpose and (a.) who applied for a job in person and were not hired, applied for a promotion and were not approved or were terminated; (b.) Swift's records show that the consumer's consumer report was one of the reasons for such employment decision; and (c.) Swift did not provide to that consumer, at least 5 business days before taking such decision, a copy of the consumer report it had used and/or the substantive notice required at 15 U.S.C. § 1681b(b) (3)

40. Bell alleges the following class, of which he is a member:

**Adverse Action
Applicants by Facsimile, Telephone, Mail, Computer and
Similar Means**

All natural persons residing in the United States about whom, during the period provided at 15 U.S.C. § 1681p about whom Swift obtained and/or used a criminal background report or other consumer report for an employment purpose and (a.) who applied for employment with Swift via facsimile, telephone, electronic mail, by regular mail, or other similar means (b.) Swift's records show that the consumer's consumer report was one of the reasons for such employment decision; and (c.) Swift did not provide to that consumer, within 3 days after taking such decision, the disclosures required by 1681b(b) (3) (B).

1 41. Upon information and belief, each alleged putative
2 Class exceeds 300 members. Information concerning the exact
3 size of the putative classes is within the exclusive
4 possession of Swift.

5 42. The members in each Class are so numerous that
6 joinder of all members is impracticable.

7 43. Plaintiffs' claims are typical of the claims of the
8 other Class members as all Class members were similarly
9 affected by Swift's unlawful conduct in violation of the FCRA.

10 44. Plaintiffs will fairly and adequately protect the
11 interest of the Class members and has retained counsel
12 competent and experienced in complex litigation. They do not
13 have any interests antagonistic to or in conflict with the
14 members of each or any Class. Further, Plaintiffs' claims are
15 the same as those of the Class, which all arise from the same
16 operative facts and are based upon the same legal theories.

17 45. Common questions of law and fact exist as to all
18 Class members and predominate over any questions solely
19 affecting individual Class members, including:

20 **In-Person Applicants**

21 a. Whether Swift violated 15 U.S.C.
22 §1681b(b)(2)(A)(i) by failing to make
23 a "clear and conspicuous" disclosure
in a document that consists solely of
the disclosure;

24 b. Whether Swift obtained a written
25 authorization to procure or cause to
26 be procured consumer reports for
employment purposes required by
§1681b(b)(2)(A)(ii);

- 1 c. Whether Swift provided a copy of the
2 consumer report to the applicant or
3 employee before declining to hire or
4 deciding to discharge the applicant or
5 employee based on the results thereof
6 as required by 15 U.S.C.
7 §1681b(b)(3)(A)(i);
- 8 d. Whether Swift provided a copy of a
9 summary of the applicant or employee's
10 rights under the FCRA before declining
11 to hire or deciding to discharge the
12 applicant or employee as required by
13 15 U.S.C. §1681b(b)(3)(A)(ii);
- 14 e. Whether Swift provided oral, written
15 or electronic notice of the adverse
16 action to the consumer that the
17 consumer reporting agency did not make
18 the decision to take the adverse
19 action and is unable to provide the
20 consumer with the specific reasons why
21 the adverse action was taken as
22 required by 15 U.S.C. §1681m(a)(2)(B);
- 23 f. Whether Swift provided oral, written
24 or electronic notice of the consumer's
25 right to obtain a free copy of the
26 consumer report on the consumer from
27 the consumer reporting agency that
28 prepared the report as required by 15
U.S.C. § 1681m(a)(3)(A));

**Applicants by Facsimile, Telephone, Mail, Computer and
Similar Means**

- 19 g. Whether Swift violated 15 U.S.C. §
20 1681b(b)(2)(B)(i) by failing to
21 provide the consumer with verbal,
22 electronic, or written notice of a
23 right to obtain a free copy of a
24 consumer background report from the
25 consumer reporting agency within 60
26 days, and to dispute the accuracy or
27 completeness of any information in the
28 consumer report directly with the
consumer reporting agency.
- 25 h. Whether Swift violated 15 U.S.C.
26 §1681b(b)(2)(B)(ii) by failing to
27 obtain verbal, electronic, or written
28 consent to procure a consumer report;

- i. Whether Swift, within 3 business days of taking adverse action, provided oral, written, or electronic notification to consumer that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency as required by §1681b(b) (3) (B) (i) (I);
- j. Whether Swift, within 3 business days of taking adverse action, provided oral, written, or electronic notification to consumer that of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) as required by §1681b(b) (3) (B) (i) (II);
- k. Whether Swift, within 3 business days of taking adverse action, provided oral, written, or electronic notification to consumer that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; as required by §1681b(b) (3) (B) (i) (III);
- l. Whether Swift, within 3 business days of taking adverse action, provided oral, written, or electronic notification to consumer that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report as required by §1681b(b) (3) (B) (i) (IV);
- m. Whether Swift, within 3 business days of receiving a consumer's request for a copy of a consumer report from the person who procured the report, together with proper identification,

1 provided the consumer a copy of a
2 report and a copy of the consumer's
3 rights as prescribed by the Federal
4 Trade Commission under
5 section 1681g (c)(3) of this Fair
6 Credit Reporting Act as required by
7 §1681b(b)(3)(B)(ii); and

8
9 n. Whether Swift knowingly and
10 intentionally acted in conscious
11 disregard of the rights of the
12 consumer.

13
14 46. A class action is superior to other available methods
15 for the fair and efficient adjudication of this controversy
16 because the membership of the Class is so numerous and
17 involves claims that, taken individually, may not justify the
18 costs and effort of bringing suit.

19
20 47. Further, the prosecution of several actions by
21 individual members of the Class would create a risk of varying
22 adjudications with respect to members of the Class, as well as
23 create inconsistent standards of conduct for those opposing
24 the Class. Additionally, individual actions by members of the
25 Class may be dispositive of the interests of other members not
26 parties to the adjudication of the claim, which would impair
27 or impede the ability of those individuals to protect their
28 interests.

**COUNT ONE - CLASS CLAIM BY DANIEL, HODGES AND BELL
DISCLOSURE AND AUTHORIZATION**

48. Plaintiffs reallege and incorporate by reference all preceding allegations of law and fact.

49. As to Inadequate Disclosure and Authorization class members who applied in-person, Swift willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i) by failing to provide a clear and conspicuous written disclosure in a document that consists solely of the disclosure to applicants and employees that a consumer report may be obtained for employment purposes.

50. As to Inadequate Disclosure and Authorization class members who applied in-person, Swift willfully violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by failing to obtain a valid authorization in writing to procure a consumer report for employment purposes.

51. As to Inadequate Disclosure and Authorization class members who did not apply in-person, Swift willfully violated 15 U.S.C. § 1681b(b)(2)(B)(ii) by failing to obtain the applicants' oral, written, or electronic consent prior to procuring a consumer report for employment purposes.

52. Plaintiffs and Class members seek statutory damages for these violations pursuant to 15 U.S.C. § 1681n(a)(1)(A).

1 53. Plaintiffs and Class members also seek punitive
2 damages for these violations pursuant to 15 U.S.C. §
3 1681n(a)(2).

4 54. In the alternative to the allegations that these
5 violations were willful, Plaintiffs and Class members allege
6 that the violations were negligent and seek issue
7 certification of that issue and an appropriate remedy, if any,
8 pursuant to 15 U.S.C. § 1681.
9

10 **COUNT TWO - CLASS CLAIM BY DANIEL AND HODGES**
11 **PRE-ADVERSE ACTION**

12 55. Daniel and Hodges reallege and incorporate by
13 reference all preceding allegations of law and fact.

14 56. Swift willfully violated 15 U.S.C. §
15 1681b(b)(3)(A)(i) by failing to provide a copy of the consumer
16 report used to make an employment decision to Daniel, Hodges
17 and the Class Members before taking adverse action that was
18 based in whole or in part on that report.
19

20 57. Swift willfully violated 15 U.S.C. §
21 1681b(b)(3)(A)(ii) by failing to provide a copy of the summary
22 of rights required by this section to Daniel, Hodges and the
23 Class Members before taking adverse action that was based in
24 whole or in part on a consumer report.
25
26
27
28

1 58. Daniel, Hodges and the Class members seek statutory
2 damages for these violations pursuant to 15 U.S.C. §
3 1681n(a)(1)(A).

4 59. Daniel, Hodges and the Class members also seek
5 punitive damages for these violations pursuant to 15 U.S.C. §
6 1681n(a)(2).

7
8 60. In the alternative to the allegations that these
9 violations were willful, Daniel, Hodges and the Class members
10 allege that the violations were negligent and seek issue
11 certification of that issue and an appropriate remedy, if any,
12 pursuant to 15 U.S.C. § 1681o.
13

14 **COUNT THREE - CLASS CLAIM BY DANIEL AND HODGES**
15 **ADVERSE ACTION - IN-PERSON APPLICANTS**

16 61. Daniel and Hodges reallege and incorporate by
17 reference all preceding allegations of law and fact.

18 62. Swift willfully violated 15 U.S.C. § 1681m(a)(3)(A)
19 by failing to provide Daniel, Hodges and the Class members
20 with oral, written or electronic notice of the consumer's
21 right to obtain within 60 days a free copy of the consumer
22 report regarding the consumer from the consumer reporting
23 agency that prepared the report.
24

25 63. Swift willfully violated 15 U.S.C. § 1681m(a)(2)(B)
26 by failing to provide Daniel, Hodges and the Class members
27
28

1 with oral, written or electronic notice that the consumer
2 reporting agency did not make the decision to take adverse
3 action and is unable to provide the consumer with the specific
4 reason why the adverse action was taken.

5
6 64. Daniel, Hodges and the Class members seek statutory
7 damages for these violations pursuant to 15 U.S.C. §
8 1681n(a)(1)(A).

9
10 65. Daniel, Hodges and the Class members also seek
11 punitive damages for these violations pursuant to 15 U.S.C. §
12 1681n(a)(2).

13
14 66. In the alternative to the allegations that these
15 violations were willful, Daniel, Hodges and the Class members
16 allege that the violations were negligent and seek
17 certification of that issue and an appropriate remedy, if any,
18 pursuant to 15 U.S.C. § 1681.

19 **COUNT SIX - CLASS CLAIM**
20 **adverse action - Applicants by Facsimile, Telephone, Mail,**
21 **Computer and Similar Means**

22 67. Bell realleges and incorporates by reference all
23 preceding allegations of law and fact.

24 68. Swift willfully violated 15 U.S.C. §1681b(b)(3)(B)(i)
25 by taking adverse action based in whole or in part upon the
26 consumer report without providing verbal, electronic, or
27

1 written notice within 3 business days of taking the adverse
2 action (i) that adverse has been taken based in whole or in
3 part on the consumer report, (ii) the name, address, and
4 telephone number of the consumer reporting agency, (iii) that
5 the consumer reporting agency did not make the decision to
6 take adverse action and is unable to provide the consumer with
7 specific reasons why the adverse action was taken, (iv) that
8 the consumer may request a free copy of the report and may
9 dispute with the consumer reporting agency the accuracy or
10 completeness of the report.
11

12
13 69. Bell and the Class members seek statutory damages for
14 these violations pursuant to 15 U.S.C. §1681n(a)(1)(A).

15 70. Bell and the Class members also seek punitive damages
16 for these violations pursuant to 15 U.S.C. §1681n(a)(2).

17 71. In the alternative to the allegations that these
18 violations were willful, Bell and the Class members allege
19 that the violations were negligent and seek issue
20 certification of that issue and an appropriate remedy, if any,
21 pursuant to 15 U.S.C. §1681.
22

23 **WHEREFORE**, Daniel, Hodges, Bell and the putative class
24 respectfully pray for the following relief:
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26
27
28

- A. An order certifying the proposed class herein pursuant to Fed. R. Civ. P. 23 and appointing the undersigned counsel to represent same;
- B. The creation of a common fund available to provide notice of and remedy Swift's unlawful conduct;
- C. Statutory and punitive damages for all class claims;
- D. Attorneys' fees, expenses and costs;
- E. Pre-judgment and post-judgment interest as provided by law; and
- F. Such other relief as the Court deems just and proper.

JURY DEMAND

Daniel demands a trial by a jury as to all issues presented herein.

RESPECTFULLY SUBMITTED this 5th day of August, 2011.

LUBIN AND ENOCH, P.C.

s/ Stanley Lubin

STUMPHAUZER, O'TOOLE, McLAUGHLIN,
McGLAMERY & LOUGHMAN CO., LPA

s/ Dennis M. O'Toole*

s/ Matthew A. Dooley *

s/ Anthony R. Pecora*

LITIGATION ASSOCIATES, P.C.

s/ Leonard A. Bennett*

* *Pro Hac Vice Application to be filed.*

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2011, I electronically transmitted the attached Complaint to the U.S. District Court Clerk's office using the CM/ECF System for filing.

s/Danette Valencia